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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Natural Resources and Transportation...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

Senate

Record of Committee Proceedings

Committee on Natural Resources and Transportation

Assembly Bill 509

Relating to: liability of cities, villages, towns, and counties for damages caused by an insufficiency or want of repair of a highway.

By Representatives Albers, Musser, Ainsworth, Petrowski, Kreibich, Hahn, F. Lasee, Gottlieb, Vos, LeMahieu, Hundertmark, Gunderson, Wieckert, Mursau, Gronemus and Jeskewitz; cosponsored by Senators Breske, Brown, Grothman and Schultz.

November 01, 2005 Referred to Committee on Natural Resources and Transportation.

January 11, 2006 **PUBLIC HEARING HELD**

Present: (5) Senators Kedzie, Stepp, Kapanke, Wirch and Breske.

Absent: (0) None.

Appearances For

- Sheryl Albers — State Representative, 50th Assembly District
- Matt Stohr — Wisconsin Counties Association

Appearances Against

- Christine Bremer Muggli — Wisconsin Academy of Trial Lawyers

Appearances for Information Only

- None.

Registrations For

- Michael Serpe — County of Kenosha
- David Krahn — Waukesha County
- Mark Wadium — Outagamie County
- Curt Witynski — League of Wisconsin Municipalities
- Mickey Beil — Dane County

Registrations Against

- None.

February 1, 2006 **EXECUTIVE SESSION HELD**

Present: (5) Senators Kedzie, Stepp, Kapanke, Wirch and
Breske.
Absent: (0) None.

Moved by Senator Breske, seconded by Senator Kapanke that
Assembly Bill 509 be recommended for concurrence.

Ayes: (5) Senators Kedzie, Stepp, Kapanke, Wirch and
Breske.
Noes: (0) None.

CONCURRENCE RECOMMENDED, Ayes 5, Noes 0

Matt Phillips
Committee Clerk

Vote Record

Committee on Natural Resources and Transportation

Date: 2-1-06

Bill Number: AB 509

Moved by: Breske

Seconded by: Kapanke

Motion: Concurrence

Committee Member

Senator Neal Kedzie, Chair

Senator Cathy Stepp

Senator Dan Kapanke

Senator Roger Breske

Senator Robert Wirch

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
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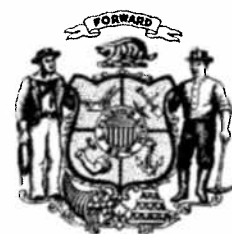
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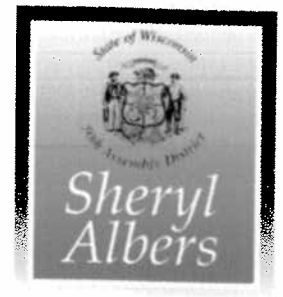
☐ Motion Carried

☐ Motion Failed



WISCONSIN STATE LEGISLATURE





November 2, 2005

Senator Neal Kedzie
Room 313 South, State Capitol
P.O. Box 7882
Madison, WI, 53707-7882

Dear Senator Kedzie,

A proposal of mine, AB 509, has been assigned to your Committee. I am requesting a hearing on this bill. It provides relief to our local municipalities for mishaps that may occur from potholes, cracks, or other defects that occur naturally in roads. As you know, having been a local official, it is almost difficult to anticipate liability lawsuits, making it impossible to budget for them. There is just no way to determine how many will be brought or when they will occur. Municipalities are stretched thin already – just like the state. Even if they “win” their case, taxpayers ultimately “lose” because their resources are expended in order to defend the actions against local government. In a time when aids to local governments are being scaled back, local governments are asking us for relief from certain mandates and other onerous laws.

The impetus for this legislation was created by a ruling of the Court that enforced §81.15 while suggesting that §81.15 be repealed. This bill provides the corrective language suggested by the Court and needed by our local governments.

You may remember that the 2003 Assembly Bill 255 version of this bill passed the Assembly and Senate only to be vetoed by the Governor.

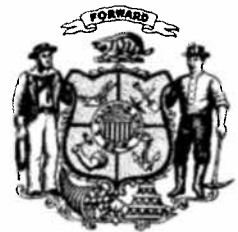
If you need additional information or have any questions, please contact me or Joyce Waldrop, Chief of Staff at 266-8531.

Sincerely,

Sheryl K. Albers
State Representative
50th Assembly District



WISCONSIN STATE LEGISLATURE



Chairman's Notes: Senate Committee on Natural Resources and Transportation Public Hearing – January 11, 2005

- ✓ • Welcome to today's hearing of the Senate Committee on Natural Resources and Transportation.
- ✓ • Committee Clerk will take Attendance. The roll will be left open for members who have yet to arrive.
- ✓ • I would like to remind individuals wishing to testify to fill out a hearing slip and give it to the member of the Sergeant's Staff.

✓ **Senate Bill 162 (Introduced by the Joint Legislative Council)**

Relating to: creating a Council on Transportation Infrastructure in the Department of Transportation.

Summary: This bill creates a 16-member Council on Transportation Infrastructure (council) in the Department of Transportation (DOT). The membership of the council is composed of the following:

- four persons who have knowledge or experience in matters related to transportation infrastructure, appointed by the governor;
- four persons who have knowledge or experience in matters related to transportation infrastructure, of whom one person is appointed by, respectively, the speaker of the assembly, the assembly minority leader, the senate majority leader, and the senate minority leader;
- two state officers with duties related to transportation infrastructure, appointed by the governor;
- the secretary of transportation (secretary) or his or her designee, who serves as the chairperson; and,
- five legislative members, three from the assembly and two from the senate, who serve on standing committees dealing with transportation matters, appointed as are members of legislative standing committees.

The council is authorized to consider and make recommendations to DOT on matters related to transportation infrastructure development, including

✓ **Assembly Bill 509 (Rep. Albers and Senator Breske)**

Relating to: liability of cities, villages, towns, and counties for damages caused by an insufficiency or want of repair of a highway. (FE)

Summary: This bill eliminates the specific immunity exception under which cities, villages, towns, and counties may be held liable for an insufficiency or want of repairs of a highway. This bill does not affect the immunity exception under which cities, villages, towns, and counties may be held liable for damages of up to \$50,000 for the accumulation of snow or ice that has existed on a highway for at least three weeks. The bill also eliminates secondary liability for cities, villages, towns, and counties.

Assembly History:

- Assembly Committee on Urban and Local Affairs voted 5-2 to recommend passage of AB 509.
- The Assembly passed AB 509 on a 61-36 vote.

✓ **Assembly Bill 534 (Rep. Ainsworth and Rep. Zien)**

Relating to: sale, by the Department of Transportation, of surplus real property.

Summary: Under this bill, DOT need not petition the governor before it sells or conveys real property that is no longer necessary for transportation purposes. However, the bill requires DOT to sell or convey, within 12 months of completing the transportation project for which the property was acquired, real property that is no longer necessary for transportation purposes. If the property has no marketable value, DOT must convey the property at no cost to whomever owns adjoining property. If the property has limited marketable value (i.e., the property only has value to adjoining landowners), DOT must offer the property for sale at its appraised value. If, within six months, the property does not sell, DOT may accept sealed bids for the sale of the property. The bill requires DOT to sell generally marketable land via sealed bids.

Assembly History:

- Assembly Committee on Property Rights and Land Management voted 5-0 to recommend passage.
- Joint Committee on Finance voted 16-0 to recommend passage.
- Passed by the Assembly on a voice vote.

**Chairman's Notes: Senate Committee on
Natural Resources and Transportation
Executive Session – January 31, 2006**

Senate Bill 162 (Joint Legislative Council)

Relating to: creating a Council on Transportation Infrastructure in the Department of Transportation.

- **MOTION FOR INTRODUCTION AND ADOPTION OF LRB 2072/1 AS SA 1**
- **SECOND**
- **DISCUSSION**
- **ROLL CALL**

- **MOTION FOR PASSAGE OF SB 162 AS AMENDED**
- **SECOND**
- **DISCUSSION**
- **ROLL CALL**

ASSEMBLY BILL 20 (AINSWORTH/ZIEN)

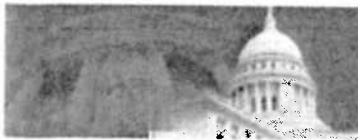
Relating to: displaying attractions on highway specific information signs.

- **MOTION FOR CONCURRENCE OF AB 20**
- **SECOND**
- **DISCUSSION**
- **ROLL CALL**

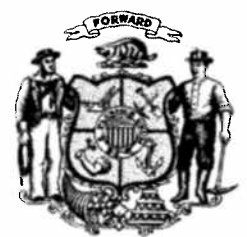
Assembly Bill 509 (Rep. Albers and Senator Breske)

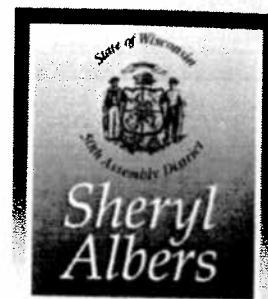
Relating to: liability of cities, villages, towns, and counties for damages caused by an insufficiency or want of repair of a highway. (FE)

- **MOTION FOR CONCURRENCE OF AB 509**
- **SECOND**
- **DISCUSSION**
- **ROLL CALL**



WISCONSIN STATE LEGISLATURE





2005 Assembly Bill 509— Highway Maintenance Liability
Testimony of State Representative Sheryl K. Albers
Senate Committee on Natural Resources and Transportation
January 11, 2006

Thank you, Mr. Chairman, for the opportunity to discuss AB 509, a bill that provides relief and much-needed peace of mind to our municipalities for mishaps that may occur from potholes, cracks, or other defects that occur naturally in roads.

AB 509 is a reintroduction of 2003 Assembly Bill 255 which passed both the Assembly and Senate then was vetoed by the Governor. This issue came to my attention as a result of an incident that occurred in Juneau County in February of 1994.

That month, a vehicle traveling in Juneau County lost control, crossed the centerline, and struck an oncoming vehicle, driven by John Morris. John, unfortunately, was seriously injured.

In the aftermath of the incident, the Morrises sued Juneau County under §81.15 of the Wisconsin Statutes. They claimed that the accident resulted from a rut between the edge of the road and the shoulder. They also claimed that Juneau County was negligent in maintaining the roadway, and as such, they were entitled to financial compensation.

The case made its way to the Wisconsin Supreme Court, where the Court ruled in favor of Mr. Morris. Specifically, the court said that Juneau County could not raise a defense of discretionary immunity under §893.80(4) because §81.15 acts as an exception to that law.

At that time, the Court suggested strongly – as it had in the past – that §81.15 be repealed. It had no choice but to enforce §81.15 as an exception because the Legislature, given fair warning, failed to take corrective action. This bill provides the corrective language suggested by the Court and needed by our local governments.

While the remedy isn't necessarily simple, I think it comes down to this – if there's a pothole in the road, and your car hits it, and you get a flat tire, should you be able to sue a local government for the costs of getting a new tire? Or do we assume that when we get behind the wheel, not all roads are perfect and that occasional flat tires and other mishaps are part of owning and operating a vehicle?

When one considers that most everyone in Wisconsin has automobile insurance to assist with the expenses of road-related accidents, it is clear that we, as a society, have chosen the latter. We accept responsibility for accidents. We pay for insurance to limit our financial liability for these accidents.

Counties are self insured so leaving them on the hook for liability is an unsettling proposition. Local governments can't catch every road defect the second it emerges. They're often reliant on phone calls from local residents to identify

these problems – someone complains about a pothole, someone gets sent to check it out, and the problem is fixed. I firmly believe that local governments operate in good faith and resolve these problems in as timely a fashion as possible.

It is difficult to anticipate liability lawsuits, making it difficult if not impossible to budget for them. There is no way to determine how many will be brought or when they will occur. Municipalities are stretched thin already – just like the state. Even if they “win” their case, taxpayers ultimately “lose” because their resources are expended in order to defend the actions against local government. In a time when aids to local governments are being scaled back, local governments are asking us in return for relief from certain mandates and other onerous laws. This is one of them.

The bill does not provide municipalities with complete immunity. Rather, it allows the courts the latitude to determine whether certain repairs are “ministerial” duties or “discretionary” duties – in other words, whether local governments have to perform them, or may perform them at their discretion. It also lessens the burden for the taxpayer because it protects the funds used to pay for judgments against a county under their self insurance policy.

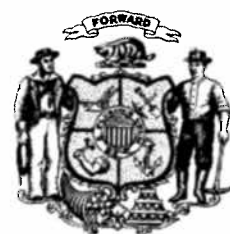
I believe that allowing courts to make these determinations on a case-by-case basis is the best approach. It also gives local governments a proverbial leg to stand on. Right now, local governments cannot use discretion as an argument. They are specifically liable for damages that result from defects in their roads. The only question for a court to determine is whether or not the defect contributed to or directly caused the damages. Local governments deserve more flexibility in defending their actions.

I have distributed a comprehensive "Question and Answer" document that addresses many of the frequent questions I have been asked in regard to this bill. Please take a moment and look it over.

Thank you for your time. I hope that the committee chooses once again to recommend passage of this bill. I would be happy to answer any questions you might have at this time.



WISCONSIN STATE LEGISLATURE





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E-mail: league@lwm-info.org
www.lwm-info.org

To: Senate Committee on Natural Resources and Transportation
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: January 11, 2006
Re: Support for AB 509, the Pothole Liability Bill

The League of Wisconsin Municipalities supports Assembly Bill 509, which provides municipality's with the ability to assert a defense of immunity from liability for discretionary highway maintenance decisions.

A similar bill passed both houses last session but was vetoed by Governor Doyle at the request of the Wisconsin Academy of Trial Lawyers. AB 509 passed the Assembly by a vote of 61-36 in October 2005.

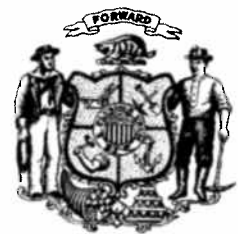
Municipal officials support AB 509 for the following reasons:

- By eliminating the pothole liability exception in sec. 81.15, Stats., the bill treats discretionary highway maintenance decisions by municipal officials the same as other discretionary actions by municipalities – they are immune from liability.
- It makes the rule of immunity for discretionary municipal functions consistent and uniform.
- It retains the three-week grace period provided to municipalities for snow and ice removal that has been in existence since 1898.
- It provides additional protection to municipal taxpayers.

For these reasons we urge you to recommend passage of AB 509. Thanks for considering the comments of municipalities regarding this important bill.



WISCONSIN STATE LEGISLATURE



MEMORANDUM

TO: Honorable Members of the Senate Committee on Natural Resources and Transportation

FROM: Matthew Stohr, Legislative Associate MS

DATE: January 11, 2006

SUBJECT: 2005 Assembly Bill 509

The Wisconsin Counties Association (WCA) strongly supports Assembly Bill 509 (AB 509). AB 509 repeals language in two sections of the Wisconsin statutes that relate to the liability of municipalities and counties for insufficient or inadequately maintained highways.

Section 893.80 (4) Wis. Stats. confers immunity for cities, towns and counties from the performance of a discretionary duty, or duty which requires a governmental entity to use judgment or discretion in carrying out this duty.

The Wisconsin Supreme Court in *Morris v. Juneau County*, held that the statutory provision (Wis. Stats. 81.15 and 81.17) imposing liability on cities, villages, towns and counties for highway defects is an exception from liability arising out of the performance of discretionary duties. However, in the Supreme Court decision in *Morris v. Juneau County*, the Court clearly states that it has repeatedly suggested that the Legislature repeal Wis. Stats. 81.15 and 81.17. The Court stated, "Because the Legislature continued to breathe life into a statute which the Court stated was no longer needed, we must now give the statute effect."

Potholes and similar road wear can develop with little warning, as weather conditions in Wisconsin are unpredictable. The Wisconsin Supreme Court set a very dangerous precedence in *Morris v. Juneau County*. The result of this case is that property tax dollars may now potentially be allocated to pay for lawsuit settlements rather than the repair of highways.

It is important to note that AB 509 does not allow local governments to be negligent in their duties. Wis. Stats. 893.80 still would hold local governments liable for road disrepair if they are notified about a dangerous situation and did not act in a timely matter.

Page 2
WCA Memorandum
January 11, 2006

County highway departments have the very difficult task of maintaining safe roads with a minimal amount of taxpayer dollars. AB 509 ensures that taxpayer dollars go toward repairing roads rather than costly lawsuits. The bill will also afford local governments the same liability immunity that the state currently receives under Wisconsin Statute. For these reasons, WCA respectfully requests your support for Assembly Bill 509.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me at the WCA office.